

Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 EURE-00 SSO-00 NSCE-00 INRE-00 USIE-00

CIAE-00 DODE-00 PM-07 H-02 INR-10 L-03 NSAE-00 NSC-10

PA-03 RSC-01 PRS-01 SS-15 NEA-10 TRSE-00 MBFR-03

SAJ-01 ACDA-19 OMB-01 IO-13 RSR-01 NIC-01 /127 W

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O R 221611 Z JUN 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 5856

USMISSION BERLIN IMMEDIATE

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY MOSCOW

USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 08945

E. O. 11652: GDS

TAGS: PGOV, PFOR, WB, GE, GW

SUBJECT: BK/ L ON BASIC TREATY

REF: A) BERLIN 1060; B) BERLIN 1054; C) BONN 8700;

D) BERLIN 865

SUMMARY: AFTER CONSIDERABLE DISCUSSION OF REVISED DRAFT BK/ L AT BONN GROUP MEETING ON JUNE 22, FOREIGN OFFICE REP (BRAEUTIGAM) SAID HE UNDERSTOOD THE REASONING BEHIND THE ALLIED DESIRE FOR A STATEMENT ON CONSULTATION, BUT DOUBTED HE COULD OBTAIN APPROVAL FOR EITHER OF THE ALTERNATIVES PROPOSED BY THE BERLIN MISSIONS IN TIME TO MAKE POSSIBLE ISSUANCE OF THE BK/ L BY NEXT WEEK, WHICH CONTINUED TO BE A DESIRE OF THE FRG. HE PROPOSED INSTEAD THAT THE ALLIES ISSUE THE BK/ L MORE OR LESS ALONG THE LINES PROPOSED BY THE ALLIED MISSIONS, WITH A CLEAR UNDERSTANDING THAT DISCUSSIONS ON A STATEMENT ON CONSULTATIONS WOULD CONTINUE WITH A VIEW TO REACHING

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AGREEMENT AS SOON AS POSSIBLE. ALLIED REPS AGREED TO RECOMMEND THIS COMPROMISE TO THEIR AUTHORITIES. ACTION REQUESTED: COMMENTS BY DEPARTMENT AND BERLIN ON PROCEDURES DESCRIBED BELOW. END SUMMARY.

1. BEFORE TURNING TO THE SUBSTANCE OF THE PROPOSALS FROM BERLIN, BRAEUTIGAM ASKED TO CLARIFY ONCE AGAIN THE PROCEDURES AND TIMING WHICH SHOULD BE FOLLOWED IN BERLIN. HE SAID THAT THE FEDERAL GOVERNMENT HAD NOT TREATED THE BASIC TREATY IN THE SAME MANNER AS OTHER INTERNATIONAL AGREEMENTS WHEN SUBMITTING IT TO THE ALLIED KOMMANDATURA, BUT RATHER AS A NORMAL LAW. THE GERMAN SIDE HAD FELT THAT THIS PROCEDURE WAS ACCEPTABLE FOR TWO REASONS. FIRST, AFTER THE DETAILED CONSULTATIONS WHICH HAD BEEN CONDUCTED BOTH IN BONN AND BERLIN, THERE COULD BE NO DOUBT THAT THE ALLIES WERE AWARE OF THE CONTENT AND IMPLICATIONS OF THE BASIC TREATY, AND THUS THERE WAS NO PRACTICAL NECESSITY TO ATTACH THE TEXT TO THE LAW. SECONDLY, AND MOST IMPORTANT, WAS THAT WHEN THE LAW HAD BEEN ORIGINALLY SUBMITTED TO THE AK, THE FEDERAL GOVERNMENT HAD NOT YET BEEN SURE AS TO WHICH PROCEDURES WOULD BE DEvised TO COVER SUCH AGREEMENTS. IT THUS THOUGHT THAT IT WOULD BE BETTER TO TREAT THE MATTER AS A NORMAL LAW UNTIL THESE PROCEDURES HAD BEEN DEvised.

2. BRAEUTIGAM NOTED THAT THE ALLIED DRAFT BK/ L SUPPORTED THIS VIEW IN THAT IT STATED IN THE FIRST PARAGRAPH THAT THE AK HAD NO OBJECTION TO APPLICATION OF THE " LAW RELATING TO" THE BASIC TREATY. THE REST OF THE BK/ L THEN PROCEEDED TO ESTABLISH PROCEDURES FOR EXTENSION OF FUTURE INNER- GERMAN ARRANGEMENTS TO BERLIN. IN THE GERMAN VIEW, THEREFORE, THE PROPER METHOD OF ADOPTION WOULD BE THE MANTELGESETZ PROCEDURE AND NOT THROUGH A FURTHER SUBMISSION AS DESCRIBED IN PARA 6 OF REF (B). BRAEUTIGAM SAID THERE WAS SOME URGENCY ON THE GERMAN SIDE IN THIS MATTER, SINCE IT WISHED TO HAVE APPLICATION TO BERLIN APPROVED BEFORE VARIOUS OPERATIVE PORTIONS OF THE BASIC TREATY BEGAN TO TAKE EFFECT. IT THUS WISHED TO HAVE THE LAW ADOPTED BY THE HOUSE OF REPRESENTATIVES BEFORE THE SUMMER RECESS.

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3. ALLIED REPS THOUGHT THIS PROCEDURE WOULD BE ACCEPTABLE TO THEIR AUTHORITIES, BUT WERE OF THE VIEW THAT IF THE APPROPRIATE PROVISIONS OF THE BASIC TREATY WERE TO BE OPERATIVE IN BERLIN SO SOON, IT WOULD BE DESIRABLE TO HAVE THE BK/ L ISSUED BEFORE THE TREATY LAW HAD BEEN TAKEN OVER BY THE HOUSE OF REPRESENTATIVES

IN ORDER TO MAKE CLEAR THE BASIS ON WHICH THIS ACT WAS
BEING TAKEN. BRAEUTIGAM AGREED, SAYING THAT THE
FEDERAL GOVERNMENT ALSO BELIEVED THAT THE EXISTENCE
OF THE BK/ L WITH ITS REFERENCE TO ON- GOING INNER- GERMAN
ARRANGEMENTS WOULD ALSO STRENGTHEN THE FRG' S CASE IN
ATTEMPTING TO SECURE INCLUSION OF BERLIN IN NEW AGREE-
MENTS NEGOTIATED WITH THE GDR. HE SAID HE HAD BEEN
INSTRUCTED TO ASK THAT THE BK/ L BE ISSUED BEFORE FINAL
ACTION BY THE BERLIN HOUSE OF REPRESENTATIVES.

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O R 221611 Z JUN 73
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 5857
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4. CONCERNING THE SUBSTANCE OF THE REVISIONS MADE BY
THE BERLIN MISSIONS IN THE FRG DRAFT BK/ L BRAEUTIGAM
SAID THAT HE WAS FAIRLY CERTAIN THAT THERE WOULD BE
NO OBJECTION TO THE ALTERATIONS MADE IN THE FIRST TWO
PARAGRAPHS OR TO REMOVAL OF THE PHRASE " MUTATIS
MUTANDIS" FROM PARAGRAPH THREE. HE WAS, HOWEVER,
LESS SURE ABOUT THE CONTENT OF THE ALTERNATIVE PROPOS-

ALS FOR A STATEMENT ON CONSULTATIONS. BRAEUTIGAM SAID THE FEDERAL GOVERNMENT WAS NOT OBJECTING TO THE CONCEPT OF CONSULTATION WITH THE ALLIES AND WOULD PROBABLY EVEN BE READY TO AGREE TO A JOINT STATEMENT ALONG THESE LINES. THE PROBLEM WAS ENTERING INTO A COMMITMENT WHEREBY THE SENAT WOULD CONSULT WITH THE ALLIES ON AGREEMENTS BEING NEGOTIATED BY THE FRG TO WHICH IT WOULD NOT BE A PARTY AND THE PREPARATION OF WHICH WOULD BE DONE IN BONN.

5. BRAEUTIGAM SAID TO FULFILL THE OBLIGATION AS STATED
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IN THE PRESENT ALLIED DRAFTS WOULD MEAN THAT THE FEDERAL GOVERNMENT WOULD HAVE TO ATTACH A REPRESENTATIVE OF THE SENAT ALMOST PERMANENTLY TO ITS NEGOTIATING TEAMS AND THAT THIS REPRESENTATIVE WOULD HAVE TO BE UNDERWAY CONTINUOUSLY BETWEEN BONN AND BERLIN CARRYING INFORMATION TO BE PASSED BACK AND FORTH BETWEEN THE ALLIES AND THE FRG. HE POINTED OUT THAT CONSULTATION ON INNER- GERMAN ARRANGEMENTS HAD BEEN CONDUCTED QUITE SUCCESSFULLY IN BOMN AND THAT IT WAS THE INTENTION OF THE FRG TO CONTINUE SUCH CONSULTATIONS IN THE BONN GROUP. ANY OTHER ARRANGEMENT WOULD BE IMPRACTICAL AND, IN CASES OF URGENCY, MIGHT EVEN HOLD UP THE CONCLUSION OF IMPORTANT NEGOTIATIONS.

6. ALLIED REPS SAID THAT THE INTENTION OF THIS WORDING WAS NOT TO REQUIRE MINUTE CONSULTATION ON ALL POINTS OF INNER- GERMAN ARRANGEMENTS, BUT RATHER TO INDICATE THE IMPORTANCE WHICH THE ALLIES ATTACHED TO BEING INFORMED ON BERLIN RELATED ASPECTS OF INNER- GERMAN NEGOTIATIONS AND TO POINT OUT THAT THE EXPERTISE ON MOST OF THE DETAILED MATTERS WHICH WOULD NOW BE UNDER DISCUSSION WAS LOCATED IN BERLIN AND NOT IN BONN. THE US REP NOTED THAT IT WOULD SIMPLY NOT BE POSSIBLE FOR BONN GROUP REPS TO GRASP THE CONSEQUENCES OF MANY OF THE THINGS WHICH WOULD BE UNDER NEGOTIATION AND THAT THE CORRECT PLACE TO RAISE SUCH POINTS WAS BERLIN. THE AIM OF THE PROPOSED LANGUAGE WAS TO PLACE OUR REQUIREMENTS ON THE RECORD. THEFRENCH REP (BELLESCIZE) ADDED THAT THERE WAS ALSO A QUESTION OF COMPETENCES INVOLVED. IT WAS THE BERLIN MISSIONS WHO WERE RESPONSIBLE FOR REACHING DECISIONS ON WHICH LAWS AND AGREEMENTS SHOULD BE TAKEN OVER AND THIS LONG- ESTABLISHED RELATIONSHIP SHOULD NOT BE PUT IN QUESTION.

7. BRAEUTIGAM SAID THAT THIS WAS NOT THE INTENTION OF THE FRG AND HE WAS SURE AGREEMENT COULD BE REACHED ON A SATISFACTORY MEANS OF RECORDING AGREEMENT BY ALL CONCERNED, INCLUDING THE FRG AND THE SENAT, THAT

SUCH CONSULTATION SHOULD TAKE PLACE. HOWEVER, HE COULD
STATE CLEARLY THAT HE COULD NOT ACCEPT PRESENT ALLIED
LANGUAGE. GIVEN THE LACK OF TIME AND THE CLEAR NEED
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TO GIVE DETAILED CONSULTATION TO THE QUESTION,
BRAEUTIGAM WONDERED IF THE ALLIES COULD AGREE TO
ISSUANCE OF THE PRESENT DRAFT BK/ L MORE OR LESS ALONG
THE LINES PROPOSED BY THE BERLIN MISSIONS. FINAL
ACTION ON THE WORDING ON CONSULTATION WOULD BE POST-
PONED, WITH THE CLEAR UNDERSTANDING THAT AGREEMENT
WOULD BE REACHED IN SOME MUTUALLY ACCEPTABLE FORM TO
WHICH ALL INTERESTED PARTIES WOULD BE COMMITTED.

8. ALLIED REPS THOUGHT THIS COMPROMISE WOULD BE
ACCEPTABLE IF THE FRG COULD AGREE TO LANGUAGE IN PARA
3 ALONG THE LINES OF ALTERNATIVE A, WHICH WOULD HAVE
TO BE THE VERSION CHOSEN IF AN ANNEX WERE NOT TO BE
ATTACHED TO THE BK/ L. THEY WERE SURE THEIR AUTHORITIES
WOULD ALSO REQUIRE FIRM ASSURANCES THAT THE FEDERAL
GOVERNMENT WOULD BE PREPARED TO REACH PROMPT AGREEMENT
ON SUCH A STATEMENT. BRAEUTIGAM SAID HE WOULD PRESENT
THIS PROPOSITION TO HIS AUTHORITIES. IT WAS AGREED
TO REQUEST INSTRUCTIONS IN TIME FOR FURTHER CONSIDER-
ATION OF SUBJECT AT BONN GROUP MEETING ON MONDAY, JUNE
25.

9. DEPARTMENT. S AND USBER' S COMMENTS REQUESTED ON
PROCEDURES OUTLINED ABOVE. HILLENBRAND

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